

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Closed Captioning and Video Description)
of Video Programming)

Implementation of Section 305 of the)
Telecommunications Act of 1996)

Video Programming Accessibility)

MM Docket No. 95-176

Comment Date: February 28, 1997

Comments of KALEIDOSCOPE Television

INTRODUCTION

KALEIDOSCOPE Television (KTV) is a national television network that transmits programming 24 hours a day, 7 days a week and is targeted to the Deaf, hard of hearing, and disability communities as well as those with major health concerns. All programming, advertisements, infomercials, public service announcements, promos, billboards, bumpers, wraparounds and other related interstitial material are 100% open captioned without need for a decoder and is currently seen in 16 million households nationally and internationally.

KALEIDOSCOPE respectfully advises the Federal Communications Commission to amend all references to captioning in this rulemaking as "captioning" rather than "closed captioning" to allow broader methodology to be used in order to achieve maximum results in the goals of full accessibility.

NOTE: For clarity, passages of the FCC's proposed rulemaking have been edited along with KALEIDOSCOPE's comments to particular sections where comments were requested. FCC's wording is in PLAIN text while KALEIDOSCOPE's comments are in BOLD.

A. RESPONSIBILITY FOR CAPTIONING

28. We propose that the responsibility for compliance with our closed captioning requirements should be placed on video programming providers, which we define as all entities who provide video programming directly to a customer's home, regardless of the distribution technologies employed by such entities. We believe that the programming providers are in the best position to ensure that the programming they distribute is closed captioned because of their role in the purchasing of programming from producers. For example, a provider can refuse to purchase programming that is not closed captioned. We also believe that the direct link between consumers and their video providers is an important consideration for ensuring compliance with our rules. We seek comment on this view.

"Providers" will be reserved to programmers or networks which produce and/or acquire programming to air on their respective networked services. Further definition is required

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to distinguish the difference between networks/programmers and the cable operators or such related "video signal facilitators" that carry the programmers' lineups.

Networks/Programmers will be instrumental in ensuring compliance by accepting captioned programs and rejecting uncaptioned programs, whether acquired or produced in-house, in the same fashion as their normal technical standards and practices compliance mechanisms prior to airing the programs through their "video signal facilitators." Therefore, the networks/programmers are initially responsible for assuring their programming lineups are captioned prior to passing their signal through the video signal facilitator. This is the most efficient way of handling compliance as the video signal facilitators may not be able to contact the producers directly responsible for a particular program carried by the programmer.

29. We note that the language of Section 713 refers to "program providers and owners" and may have been intended to provide the Commission with jurisdiction over other parties in the production and distribution chain. We believe that a number of parties could be the program owner, including the producer, copyright holder, syndicator or distributor, and request comment on determining who is the owner of a program. We seek comment on the feasibility of having program owners and providers share responsibility for compliance obligations with our closed captioning rules.

An information-sharing mechanism (i.e. captioning source database) could be created for industry use in order to track down captioned versions of programs to avoid redoing the captions. The sharing of a caption master among the industry would be the most efficient and cost effective method.

30. Although we propose placing compliance obligations on video programming providers, we recognize that, from a practical standpoint, captioning at the production stage is often the most efficient manner to include closed captioning with video programming. Thus, we anticipate that our rules will result in video programming providers incorporating such requirements into their contracts with video producers and owners, regardless of which party has the obligation to comply with our rules. We seek comment on this view and its effect on the implementation of closed captioning requirements.

Historically, KTV has been voluntary in captioning uncaptioned acquired product. Sometimes the outside producer is willing to caption and sometimes they are not. KTV's in-house policy is that all programs, both in-house and acquired, are captioned prior to airing. This has been KALEIDOSCOPE's general policy since its inception.

Captioning at the production stage is most efficient and distribution to the industry is done at minimal cost.

Delivery requirement: If material comes in uncaptioned and there is no time to caption it, deliverer could realtime caption the product and charge the

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producer for services provided in-house by deliverer. Off-line captioning is also an option if there is sufficient turnaround time if deliverer were to perform the service in-house (i.e. KALEIDOSCOPE's captioning policy).

B. OBLIGATIONS AS TO NON-EXEMPT PROGRAMMING- TRANSITION RULES FOR NEW PROGRAMMING

41. We propose a transition schedule of eight years that will phase in captioning of all non-exempt new programming by requiring an additional 25% every two years. In other words, at the end of two years after the effective date of our rules, 25% of non-exempt new programming must be closed captioned; 50% after the end of four years; 75% after the end of six years; and 100% at the end of eight years. Alternatively, we seek comment on whether the phase in schedule be completed over a ten year period, with 25% after three years, 50% after five years, 75% after seven years, and 100% after ten years.

This allows timing for budgetary preparation to purchase captioning equipment or to allocate funds for contracting captioning vendors. 25% for the first two years may be considerably substantial for smaller services as there would be less time for them to allocate funds. Three years, alternatively, gives them more time to secure grants and/or sponsorships if it is needed to help defray costs. Additionally, three years allows for growth of more captioning vendors in the industry to help fill in the expected demand. Without this time allowance for a cushion, there may not be enough vendors or available captioning staff to do all the work.

42. These proposals will provide program providers, owners, and producers significant discretion regarding what will be captioned to meet the requirements and how to use the funding available for captioning. We believe this approach is preferable to one in which the Commission specifies precisely what types of programming needs to be captioned by when. Providers have access to information, such as advertising revenues or captioning sponsorships available for specific programs or programming day parts, that may influence the choice of what programming gets captioned first. Further, program providers are the most direct link to the consumer and are in a better position than the Commission to determine what should be captioned first. We request comment on this proposal.

Consider programs that affect the well-being of consumers to be captioned first and foremost. Such examples would be emergency news reports, earthquake/tornado/hurricane warnings, etc.—anything that will have life/death/disabling results. This would be in the same principle as 911 TTY access.

43. With respect to MVPDs, we propose to apply the percentages of programming that must be captioned on a system-wide basis. Under this approach, for example, a cable operator would be required to transmit a total of 25% of all the new, non-exempt programming on its cable system with closed captions by the end of the first benchmark period. We believe that this would make possible a more rational, market driven allocation of captioning resources during the transition process. We note, however, that under this approach, a cable operator, for example, could choose to transmit one particular cable network completely captioned, while transmitting three others with no captioning. Also, it might be possible that a cable system could meet its obligation solely by passing through the captioned programs of the broadcast stations it carries. We seek comment on these and other effects of this proposal, and request comment on whether the effects may differ among the various MVPDs.

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25% per channel, not per system should be the method of measurement.
There could be an imbalance between broadcast and cable system entities as the cable system would get by by transmitting certain channels that have exceeded their 25% requirement and leave the rest of the cable system's channel offerings uncaptioned.

44. Alternatively, we seek comment on whether the percentages of programming that must be captioned should apply to each program service or channel transmitted by an MVPD. Further, we seek comment on whether, if a broadcast station is retransmitted by an MVPD, compliance with our rules should be the responsibility of the MVPD offering the service directly to the subscriber or the broadcast station programming the channel? We seek comment on similar situations where responsibility for compliance with our proposed closed captioning requirements may rest with more than one video programming provider. We also ask that commenters address the manner in which such obligations should be shared by various providers.

MVPD agreements with programming services should include in their retransmission consent agreements that the programmer assures that the minimum required percentage of captioned programming has been met. If it has not been met, then the MVPD could then in turn caption the signal that is passed through with their own captioning resources or contract a vendor to do the work and bill the programmer for services rendered. It would be the same principle as the travelers' option of either filling up the gas tank before dropping off a car rental at the rental place or be subject to paying a higher price per gallon upon check in.

45. We seek comment on whether the determination that a percentage requirement has been met should be based on the amount of programming with captioning that has been shown over a month, or whether it should be based on a week or some other period of time. We recognize that there might be legitimate reasons why certain weeks might have less captioned programming than others. We seek comment on what the period of time should be if we apply the percentages on a system-wide basis, and what it should be if we apply the percentages on a per channel basis.

Percentages should be calculated on a per channel basis on a 24-hour/day basis rather than weekly or monthly. If it were applied over a weekly or monthly basis, then it would become more sporadic like the current state of captioned television is today. Applying it on a system-wide basis: Refer to comment on item 43.

47. Further, to the extent that programming delivered to program providers is closed captioned, and the provider does not edit the programming, we propose to require that the provider must transmit the programming with captions, regardless of whether the provider has already met any percentage requirement. Recognizing that program providers may edit prerecorded captioned programming, and that, therefore, the captioning would likely need to be reformatted, we seek comment on the costs of such reformatting and on whether we should also require that such programming be shown with captions.

Aside from costs, reformatting is a quality control issue. Measures need to be addressed so that editors/engineers are familiar with the reformatting concept as many captioned transmissions go unmonitored. Currently, reformatting is a costly issue as

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the programmer would have to return the captioned master back to the captioning vendor for reformatting. However, there is new technology now available that will eliminate the need for returning the captioned master back to the vendor as the editors would be able to do the reformatting in-house, thus reducing reformatting costs dramatically. It is anticipated that when the captioning rules go into effect, programmers will have developed technical measures to accomplish reformatting in-house when time compressing their product and eliminating these expenses other than the initial hardware purchase.

48. We recognize that as distribution technologies increasingly convert to digital transmissions, there may be alternative means that become available for captioning programming. For example, it is possible that in the future technology may become available that captions programming through the receiver rather than requiring the transmission of closed captions. We seek comment on whether and if so, how, our captioning rules should be designed to take into account the technological changes that may take place as a result of digital conversion and on what steps we should take to ensure that our captioning rules do not impede the development of such new technologies.

Future technology such as Inter casting, Web TV, and related computer-based transmissions need to be taken into account for this rulemaking..

For example, AFI's VDOLive is now showing movies on the Internet and they have no plans to include them with captions.

Regulations need to cover these types of technologies. It is better to have the standards and regulations set at the design level (universal design concept) to ensure access as it is more cost effective than expensive "fixes".

49. We also note that some programming services use multiplexing to offer several programs at the same time. This practice may become more commonplace as there is increasing use of digital compression technology. We seek comment on how to determine closed captioning requirements for programming services offering multiple programs simultaneously. We also seek comment on any other situations, be they due to technological advances or otherwise, where compliance with our closed captioning requirements as proposed would be unworkable.

Regardless of distribution technology or method, they need to be captioned. As part of technical standards, captioning would be applied to the master tape which would be the source of the multiple feeds. In terms of percentages- it should be done per feed rather than the overall programming service (in same line of thought as cable systems).

NOTE: Standardization of MPEG equipment is still pending by SMPTE to ensure line 21 signals are passed intact during compression.

C. OBLIGATIONS AS TO NON-EXEMPT PROGRAMMING- TRANSITION RULES FOR LIBRARY PROGRAMMING

58. We believe it inappropriate to mandate captioning of nearly all library

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programming. First, based on the volume of existing uncaptioned programming, such a requirement could place a significant burden on the owners and providers of library programs created prior to closed captioning requirements. Further, rather than captioning their library programming, providers might elect to remove older, uncaptioned programming from their scheduled offerings rather than captioning such programs, thus reducing the amount and variety of programming options available to all viewers. We seek comment on whether the rules should require that a percentage of library programming (e.g., 75%) ultimately be captioned. We seek comment on what deadline should apply to captioning of library programming and what the relevant time frames for the transition period should be. We seek comment on any criteria that could be considered for establishing phase in schedules, noting that we do not believe immediate or near term captioning of library programming is appropriate.

59. Some commenters assert that captioning of previously published programming is increasing and thus it may be unnecessary to require completion of closed captioned video libraries by a date certain. Commenters who support this approach should indicate how the Commission would ensure that video programming providers or owners "maximize the accessibility" of previously published programming, as required by Section 713(b)(2).

The percentages of library programming to be applied should be based on what is actually scheduled on the air. In other words, when a network attempts to meet a certain percentage (e.g. 25%) over a 24-hour scheduled period, that percentage can include a mix of both new (minimum 25%) and library programming. So, the phase-in period for captioning library programming should be the same as the proposed phase-in period as new programming... as long as the library programming is actually being incorporated as part of an on-going program schedule. If the library programs are not being aired, then that would place them in a different category of regulation. The regulation of these programs would be such that it would be considered "archive" if no plans to air them are made, so therefore are exempt from the captioning regulations.

The focus on the percentages should be for the program schedules, rather than the type of programs (new/library). KALEIDOSCOPE is 100% captioned, regardless if they are new or library programs.

60. For some of the older programs included in these libraries, there may not be a single entity that holds title to or controls the program (e.g., programming for which the copyright has lapsed or which has otherwise been placed in the public domain). Each entity that owns a copy of the program might be responsible for having its copy captioned, which would be economically inefficient. We expect that the market will address any such inefficient outcomes; for example, video providers or owners may elect to wait until another provider or owner has captioned a copy of the program, which could then be duplicated for others, rather than requiring each owner or provider to secure captioning of its own copy. Alternatively, several parties owning copies of the programming could arrange to caption the programming for their use and that of others. We seek comment as to whether our expectations regarding market influences are sound.

Consider establishing a "Captioning Consortium" which would have the purpose of maintaining a database of where captioned copies exist so they can be shared with other programmers. Another purpose for the Consortium would be to have all programmers pool their monies to caption a particular program to be shared by all. This would be the most economically efficient method of making captioned programs available. Once

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captioned by the pool, only dubbing and shipping charges would be incurred for all users in the industry.

61. As with the proposal for mandatory captioning of new programming, we ask that commenters explain in detail why any of the proposals for maximizing captioning of library programming are infeasible and offer specific alternatives. We also seek comment on any criteria that could be considered for establishing phase in schedules and the relevant time frames for the transition periods.

Refer to Item 58 comments. Focus on percentage of schedule that is captioned rather than type of product (new/library).

62. We note that under these requirements it is necessary to know when a program was first exhibited or published in order to determine whether it may be shown without closed captioning. We seek comment on whether sufficient information regarding when a program was first published or exhibited is readily available.

The program source theoretically should have records of the first airing to provide to the programmer upon request, especially if it becomes second-run material. As for first-run material, the program source typically should have such records. All in all, it takes good recordkeeping. Records, however, may be unavailable for certain library programming. In this case, estimations would need to be allowed.

D. Exemptions of Classes of Programming and Providers Based on Economic Burden

71. We seek to establish a general classification or a number of general classifications of programming for which captioning would be economically burdensome. We note, however, that there are many variables that affect the costs and benefits relevant to closed captioning, and, thus we request detailed comments regarding the appropriate class exemptions that would be consistent with the statutory mandate to make video programming fully accessible to individuals with hearing disabilities. In particular we seek comment on whether a definition of economic burden should be based on factors such as relative market size, degree of distribution, audience ratings or share, relative programming budgets or revenue base, lack of repeat value, or a combination of factors.

Of the following factors listed, only RELATIVE PROGRAMMING BUDGETS would be eligible for exemption rules.

- Relative Market Size
- Degree of Distribution
- Audience Ratings or Share
- Relative Programming Budgets
- Revenue Base
- Lack of Repeat Value
- Combination of Factors

Program budgets are considered controllable at a minimum level regardless of the other factors. If captioning were to represent more than ten (10) percent of the total budget, it may be economically burdensome. In the factor of revenue base as pertaining to the program budget, revenue is what makes the program possible.

More revenue simply means the luxury of a higher program

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budget. Low revenue would possibly lead to the cancellation of the program as a whole, thus making captioning costs an irrelevant issue. So, the revenue factor should not be used to determine exemption.

72. Foreign language programming: We ask whether our general exemption should cover foreign language programming. To what extent is the captioning of such programming feasible? For example, are there captioners that are fluent in all other languages? Do foreign language programmers generally tend to have small production budgets and/or provide programming that is viewed by a limited audience? We note that, as is explained above, existing technology in television receivers is only capable of decoding Latin-based alphabets and symbols. To require non-Latin-based alphabets (e.g., Arabic, Hebrew, Japanese) to be captioned is likely to require costly technical upgrades that may be burdensome, if at all possible, to implement. Accordingly, we believe that, at a minimum, an exemption is appropriate for programming that is in languages which are not written using a Latin-based alphabet. We request comment on this proposed exemption and whether this exemption should be extended to all foreign language programming, regardless of the type of characters used to express that language in writing.

The only exceptions of foreign programming are those that are dubbed in English without subtitles, which would need to be either closed captioned or subtitled. If the programs are in their own foreign language, then closed captions would be need to be added. This would be for foreign programming with foreign captions (e.g. Spanish) that use currently available Latin-based characters. For non-Latin based characters, such programming would be exempt until American technology has provided the means to achieve this on a widespread basis. The benefits of providing the captions to minority groups would be for literacy enhancement and thus should not be 100% exempt.

Another issue of concern is programming that is acquired overseas. The American programmer acquiring the program may not be able to apply FCC captioning regulations to the foreign program source which would force the American programmer to absorb the captioning costs if it is not specifically barred in the contract.

73. Programming that is primarily textual in nature. We further propose to encompass video programming that is primarily textual within the general exemptions from our requirements for closed captioning. Such programming would include channels dedicated to on-screen program schedules or guides, stock tickers and bulletin boards, and could also include selected programs offered by other programming services. We believe that a requirement for captioning this type of programming is unnecessary because information is already provided visually, with little or no relevant audio track. We seek comment on whether the textual information currently provided by such programming is sufficient to ensure accessibility to persons with hearing disabilities. We also ask commenters to consider what, if any, definition of primarily textual video programming is needed for our rules.

Generally, textual channels have all the information on the screen and captioning is not needed. However, there is one example of an exception to this generalization. PREVUE Channel, which has program listings for the cable system, sometimes runs commercials or promos that have spoken audio tracks on the top half of the screen and are usually not captioned. Technically, because the video is squeezed with a DVE, the line 21 information is most likely to be erased even if the commercial was captioned initially. Measures would have to be undertaken to preserve the line 21 data if such product would need to

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be captioned on these semi-textual channels. Placement of such captions in this case could be problematic and redesign of the graphical presentation may be needed so textual information is not covered up by the captions.

74. Cable access programming. PEG access channel programming typically operates on a relatively small production budget. Therefore, imposing a captioning requirement may place an economic burden on the producers of such programming. However, we believe that some PEG programming is of a high public interest value because it may present important governmental, educational and community information. We request comment on whether PEG access programming should be encompassed by our general exemptions. We also seek comment on whether there are certain types of PEG access programming for which we should require captioning. If so, how should we distinguish between PEG access programming that should be encompassed by our general exemptions and that which should not be exempt?

For producers with small production budgets, refer to comments on Item 71. Such programming should be broken out in two main categories, one being governmental/public and the other private.

Private parties that produce programming for airing on cable public access channels would have to prove that captioning exceeds 10% of their production budget to be exempt, otherwise they would need to be in compliance. As for governmental/public programming, the principle of "citizens' right to know" is at issue here. Like the Americans With Disabilities Act provision that all federally-funded PSAs need to be captioned, this concept should also be applicable to governmental programs such as live city hall meetings. Currently, some are being made accessible through the use of a sign language interpreter inside a wipe effect done on the switcher. This is accessible only to the sign language using community and hard of hearing people who do not know sign language are denied access. Therefore, captioning would reach that section of the population at the expense of the government organization making the program possible. The local cable system may donate their air time, production services, and possibly the captioning services to the governmental organization.

In this respect, the cable company is merely the "facilitator" and the government organization holding the city hall meeting would be the "information generator" and the initial producer of the event. With this in mind, the "information generator" is responsible for compliance in ensuring captioning so the "citizens' right to know" privilege is granted to the public.

In terms of the city government's ability to pay for such captioning services, a case in point is the city of Fremont, California. Captioning of City Council and School Board meetings are paid for by the citizens by charging each one \$.07 a month to their cable bills. The cable company gives these funds back to the city which then in turn uses it to pay their captioning expenses. This could be a model for governmental organizations to follow when seeking such funding.

75. We do not believe, however, that leased access channels should be encompassed by our general exemptions from captioning requirements. We do not believe that captioning requirements for leased access channels would be economically burdensome, as it might be for PEG access channels, since these channels are intended to serve as commercial outlets for programming. To some extent, commercial leased access channels are expected to be used by nationally-distributed programming networks. We tentatively conclude that closed

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captioning would not be economically burdensome on leased access programming as a class, although there may be circumstances where exemptions under Section 713(d)(3), the undue burden standard, might apply. We request comment on this tentative conclusion.

For leased access programmers, exemption would be based on the captioning exceeding 10% of the production budget previously mentioned in the Item 71 comments. Such programmers will need to be in compliance prior submission to the video signal facilitator (i.e. cable operator).

76. **Instructional Programming.** Locally produced and distributed instructional programming typically operates on a relatively small production budget. Thus, a captioning requirement may be economically burdensome to the program's providers or owners and might result in the loss of such programming. We are concerned, however, that such an exemption might deprive persons with hearing disabilities of access to important educational programming. We seek comment on whether such programming should be encompassed by our general exemptions. We also request comment on whether there are alternatives to an exemption for this class of programming that would allow it to be closed captioned without imposing significant economic burdens that would result in a loss of certain programs. With respect to nationally-distributed instructional programming, we note at least some of this programming may be prerecorded and have repeated showings. Should such programming be encompassed by our exemptions from closed captioning requirements?

The 10% standard could be applied to this type of programming. However, there are issues related to this type of programming being addressed in the reauthorization efforts of the Individuals with Disabilities Education Act (IDEA) which is pending approval by Congress (H.R. 5 and S.1452). Moreover, there is the issue of the Department of Education's funding of captioning educational programming which will have an effect on captioning instructional programming as a whole. The FCC should have foresight and look into how this may possibly overlap with this proposed rulemaking under the Telecommunications Act.

77. **Advertising.** There are several types of advertising including national and local short form advertising (i.e., traditional commercials) and local and national long form advertising (e.g., infomercials). We seek comment on whether all advertising or certain types of advertising should be encompassed by our general exemptions. We seek comment on whether a requirement to close caption commercials would impose an economic burden relative to the typical production budgets for such commercials, and the typical revenues the commercials generate. Could captioning costs be offset by the revenues produced by the commercials? Alternatively, would a captioning requirement significantly raise the cost of certain advertising, especially local advertising that reaches small audiences which is currently inexpensive, and prevent some entities from advertising? We note that there is likely to be a marketplace incentive for advertisers to caption their commercials to attract consumers with hearing disabilities and seek comment on this assumption. We observe that many national advertisers have already recognized the benefits of captioning their commercials. We further believe that there will be a greater incentive for advertisers to caption their commercials once a significant amount of programming is captioned, as uncaptioned commercials will seem inconsistent with surrounding captioned programming for the individuals with hearing disabilities who are attracted to the programming because of its accessibility. We also note that in some advertising a portion of the information is provided textually or graphically and may serve as an alternative closed captioning.

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Again, the 10% standard would be applicable here.

National advertising usually has very large production budgets so would not be in any way economically burdensome. In the case of local advertising, captioning charges at less than 10% of the production budget would be manageable. If it exceeded that, exemption would be petitioned. For instance, some local advertisers pay \$1000 for production of a :30 spot. Captioning would have to be no more than \$100 to stay within the 10% standard. If it were more than that, it would be a financial burden.

Captioning rate flexibility should be considered for these types of entities to help prevent economic burden.

In the case of infomercials, it is a standard policy at KALEIDOSCOPE TV that all infomercial advertisers need to caption their programs in order to advertise on KALEIDOSCOPE. If an infomercial comes in uncaptioned, then KALEIDOSCOPE would perform the captioning services and charge the client accordingly. The size of infomercial budgets are substantial and if the 10% standard were applied, they would not qualify for exemption in most cases.

78. Home shopping programming. We are aware that home shopping channels are similar in some ways to commercials in that they are intended to sell products and present a portion of the information provided to consumers in textual form. However, we do not believe that all of the descriptive material and information provided by home shopping program hosts is currently available in textual form on the television screen. Thus, we do not propose to include home shopping programming in the classes of programming exempt from our captioning requirements. We seek comment on this tentative conclusion. Commenters who contend that this requirement is not feasible or would pose an economic burden on the providers or owners of such programming are requested to provide specific support for their contentions, including relevant cost data.

For the major shopping networks, this requirement would generally not be economically burdensome.

For the smaller ones with yearly revenue of less than \$11 million, it may pose to be an economic burden

as they would fall in the category of "small businesses". At issue are two technical considerations: Availability of real-time captioners on a 24-hour/day live basis and re-design of the graphical presentation of the network's screen to allow for captioning space. In the case of KALEIDOSCOPE's past involvement with live home shopping, the graphics were adjusted so

that the captioning would not cover up the textual graphics (e.g. prices, product names, phone numbers, etc.). Consideration needs to be made for such design requirements if home shopping were to be captioned. This type of design would be considered to be "universal design" by keeping people with disabilities in mind at the manufacturing/product design stage, rather than "fixing" it later.

79. Interstitials and promotional advertisements. From the information we have gathered, we conclude that most interstitials and promotional advertisements provide their principal information in textual form. Thus, given the number of such announcements and the short time period in which they are produced, we tentatively conclude that the burden of requiring captioning of interstitials and promotional advertisements outweighs the benefit of a mandatory requirement for captioning, and thus interstitials and promotional advertisements should be included in our general exemptions. We seek comment on this tentative conclusion. We

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believe, however, that the basic information provided by these types of announcements should be displayed in some textual or graphic form in order to provide accessibility to persons with hearing disabilities.

The concept of "universal design" should be encouraged when producing such interstitial or promo material. One technical consideration is that when clips from captioned shows are used in the edited promo, the sabotaged line 21 signals are still intact in the final edit master. This has a result of unclear captioned "bits" on the air.

Guidelines should be given to ensure that the basic message is given through the use of graphics or text. For instance, if it is a promo for a TV show, the promo should have at least the name of the show and the day/time it airs. This would be minimal access for the viewer.

Since interstitial and promotional material varies widely, the following groups have been created to indicate which types of interstitial/promotional material should be exempt and which is not:

EXEMPT MATERIAL:

- Interstitial that has key tune-in information (day, time, name of show)
- Station IDs
- Bumpers (generally only have background music)
- Promos that are mostly textual in nature
- Wraps that do not have on-camera talent (ENR method not applicable) with short production turnaround time before airing

NON-EXEMPT MATERIAL:

- Promos that do not have text/graphics to explain what is happening (i.e. 10-minute segments encouraging people to subscribe to cable)
- Wraps with on-camera talent (use ENR method to record captioning from teleprompter)
- Short form product used to build full shows (i.e. cartoons, music videos)
- Any interstitial that does not have graphics/text to be accessible
- Featurettes (i.e. "Behind the Scenes" shorts)

80. Political advertising. Political advertising is important programming in that it provides information about candidates for public office, which is beneficial to persons with hearing disabilities, as it is for all Americans. Requiring parties to close caption political advertising, however, could impose an economic burden and, thus, might prevent some of this type of advertising, especially political advertising for local elections. Accordingly, should this programming be included within our general exemptions? If it is not exempt, to what extent would a requirement for closed captioning of political advertisements be inconsistent with the anti-censorship provisions of Section 315 of the Communications Act?

As mentioned in Item 74 comments, the "citizens' right to know" principle is applicable here, so exemption should not be granted regardless of the size of production budget.

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81. Fundraising activities of noncommercial broadcasters. We tentatively conclude that live portions of noncommercial broadcasting stations' fundraising activities, e.g., pledge drives and on-air auctions, should be included within the classes of programming exempt from our closed captioning requirement. Noncommercial stations use this type of programming in lieu of commercials to raise money to support their activities. We are aware that noncommercial stations generally have fewer resources than commercial providers to raise money to finance their operations and the economic burden of captioning live fundraising activities might outweigh the benefits of captioning such programming. We seek comment on whether there are less economically burdensome alternatives to closed captioning for such programming that would ensure accessibility. For example, should we require periodic textual graphics or captioning during a fundraising program that would summarize the highlights of the program as an alternative to full closed captioning? We seek comment on this proposal and solicit alternative suggestions.

While it may be an economic burden, "universal design" guidelines mentioned in Item 79 comments could be applied here. Other options would be to use sign language interpreters on camera for the sign language using community and graphical/textual usage for the non-signing hard of hearing community. There are also "oral interpreters" available, but are not widely used on television, for hard of hearing people who depend on lipreading.

82. Music programming. There are numerous types of music included in video programming and musical programming. We believe that some types of music should be captioned, while it would be reasonable to include other types of music programming in the classes of exempt programming. With respect to music videos, we note that many of these programs are already being captioned, and that the lyrics of many songs are readily available for use by off line captioners. Music videos are not highly perishable, and often have significant production budgets, sometimes along the lines of a short film. The cost of captioning music videos can be spread over the many times they are distributed and thus a requirement to caption them should not be overly burdensome. Thus, we tentatively conclude that these programs should be captioned. We seek comment on this proposal. However, we tentatively conclude that several types of music should be encompassed by the classes of programming we exempt from captioning requirements. We believe that background music, and performances where the music is primarily instrumental (e.g., symphony concerts, ballets) should be encompassed by the classes of programming we exempt. We seek comment on whether live performances should be included within our general exemptions. With respect to background music, such as theme songs from television shows and feature films, we recognize that the lyrics may be important to the enjoyment of the programming and seek comment on whether we should require them to be captioned. We propose, however, to require that any rebroadcast of a live musical performance (that is not primarily instrumental) be captioned as it would be a prerecorded program. We seek comment on these tentative conclusions.

Any musical program/video that has words/lyrics should be captioned, whether live or pre-recorded. There are certain hard of hearing people that have some level of hearing so the captions are "supplemental" to help them distinguish the words/lyrics they are hearing. To describe this, hearing people are able to "filter" the sounds that come into their ears. For hard of hearing people and some Deaf people, that "filter" is absent and unsorted sound bombards the ears. The eyes become the "filter" to sort out the sounds that come into the ears. So watching the captioned words and lyrics helps filter out the music. If there are no words or lyrics to caption, then that qualifies for exemption. Pertaining to captioning of theme songs of TV shows, they

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should be captioned as this is a part of American culture that Deaf people do not experience fully today.

83. **Weather programming.** We propose not to include weather programming in our general exemption. Although there is often graphic information included in this programming, we believe that a significant amount of information is conveyed in the audio portion which is not captured by the graphics accompanying the report. Also, we note that satellite pictures, which are an integral part of most weather programs, are difficult to comprehend without the meteorologist's oral explanation. Given that weather conditions can and often do directly affect health and safety concerns, we tentatively conclude that it would be inappropriate to include weather programming in our general exemptions from our captioning requirements. In addition, to the extent that weather reports are part of local news programming, we do not believe that the captioning is economically burdensome. Weather reports can be scripted and included in the teleprompter text that is converted to captioning at virtually no cost using the ENR method of captioning that is common at many local stations. We seek comment on this tentative conclusion. We also seek comment as to the feasibility of captioning weather programming, and whether the cost of such captioning would outweigh its utility.

The ENR method of captioning the weather may not always be practical as emergency weather warnings often come at the last minute with no time allowance for loading scripts into the ENR system. Live stenocaptioners would have to be available to fill in this need.

84. **Sports programming.** We do not believe that all sports programming should be encompassed by our general exemptions. There is no evidence that the captioning of sports programming, in general, is economically burdensome. We note that a significant amount of nationally distributed sports programming has been captioned voluntarily as has some regional sports programming. We also do not believe that all local sports programming should be exempt from captioning because, to some extent, this type of programming may involve major league sports teams, large production budgets, and may achieve large audiences comparable to that of some national services. There may be, however, types of sports programming for which a closed captioning requirement would be burdensome, such as locally produced college or high school sports. Should those types of sports programming for which closed captioning would be economically burdensome fall under our general exemptions? In addition, we seek comment on whether there are alternatives to a closed captioning requirement for this type of programming, e.g., presentation of the basic information in textual or graphical form, that would be less burdensome than a closed captioning requirement.

The 10% standard would be applicable to locally produced college or high school sports. Since many of these productions are shot with home video equipment and raw footage is aired on cable public access channels, producers of this type of programming may not have access to character generators or graphics systems to be able to edit in pertinent data for minimal access.

Exemptions are most likely in these cases.

85. While the statute provides that we also may exempt classes of video providers, we believe that a blanket exemption even for very small providers is unnecessary, because the various providers distribute the same types of programming to consumers, and all classes of providers appear to have the technical capability to deliver closed captioning to viewers intact. We request comment on whether this conclusion is sound.

The 10% standard would be used for exemptions in these classes of video providers.

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E. Exemptions Based on Existing Contracts

88. However, we recognize that it is possible that contracts may contain more general language, not explicitly mentioning closed captioning, that might nonetheless be inconsistent with captioning. We seek comment on the types of provisions that might be contained in programming contracts that would be inconsistent with a captioning requirement. We seek such comment in order to determine whether we need to identify types of contract provisions that may be eligible for exemption under Section 713(d)(2) in addition to those that specifically prohibit closed captioning. We note that a broad interpretation of this provision, which might exempt all existing contracts other than those that specifically provide for captioning, may be contrary to Congress' intent to increase the availability of captioning. Under this latter interpretation, a large volume of programming covered by long term contracts, but not yet produced, would never be captioned.

Generally, contracts do not have this type of restriction except possibly some that bar "alteration" of the product.

However, there are certain producers of sign language programming that specifically prohibit the use of captioning simultaneously with sign language for the purpose of sign language instruction. Generally, sign language is better taught with no sound or captioning cues to the sign language learner as it increases their chances of learning the language. This is one possible class of programming that may be an example for this particular clause.

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F. Exemptions Based on the Undue Burden Standard

91. **The Undue Burden Standard/Factors.** We request that commenters address the factors the Commission should consider when deciding whether particular petitions for exemptions based on undue burden should be granted. As already noted, the specific standard for an exemption is whether the captioning would involve "significant difficulty or expense" and Congress identified four factors that are to be considered in addressing this question. Because the statute states that the factors to be considered "include" the four listed factors, the statute seems to invite the Commission to consider other relevant factors besides those specifically listed in Section 713(e). Thus, we ask commenters to identify additional factors that might demonstrate that a closed captioning requirement imposes an undue burden on a video programmer or provider and should be exempt from a captioning requirement. Commenters supporting wider discretion for parties seeking an exemption should offer guidelines to assist parties seeking relief and the Commission in its decision making process. {FOOTNOTE 172: We note that, although the House version of this provision contained only the four factors enumerated in Section 713(e), the House Report suggests consideration of the following: (1) the nature and cost of providing closed captions; (2) the impact on the operations of the program provider, distributor, or owner; (3) the financial resources of the program provider, distributor, or owner and the financial impact on the program; (4) the cost of the captioning, considering the relative size of the market served or the audience share; (5) the cost of the captioning, considering whether the program is locally or regionally produced and distributed; (6) the non-profit status of the provider; and (7) the existence of alternative means of providing access to the hearing disabled, such as signing. We seek comment on this language. House Report at 115; Conference Report at 183 (citing discussion of House proposal).}

Item 91, Footnote 172: Factor #4 (cost of captioning, considering the relative size of the market served or the audience share) has no bearing on the production budget, only revenue that makes the production possible. Factor #5 (cost of captioning, considering whether the program is locally or regionally produced and distributed) also has no bearing on the production budget except for the amount of revenue generated to make it possible. For instance, there may be networks that only have very limited distribution but have enough revenue to survive well. Factor #6 (non-profit status of the provider) could also be expanded to include entities with shaky financial states such as entities under Chapter 11 bankruptcies or those being monitored by government trustees. Factor #7 (existence of alternative means of providing access to the hearing disabled, such as signing) is limited to only the sign language using community and inaccessible to non-signing hard of hearing people. Another category could be programming that was produced using fixed amounts of grant monies with no additional funds for captioning charges available, let alone being able to afford the cost of additional dubs.

95. **To the extent objective criteria can be developed, we believe that would facilitate action on exemption requests. Thus, we invite commenters to suggest what objective criteria might be applicable. Commenters should address whether or not we should require parties to provide specific facts or meet objective tests to prove an undue burden or whether petitioners should have wider discretion in demonstrating that, under their specific circumstances, the closed captioning requirements would constitute an undue burden. Commenters supporting objective tests should provide specific examples of the kinds of financial, demographic or other data they believe we should consider when making these determinations. Commenters also should provide specific parameters for evaluating these data.**

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Commenters supporting wider discretion for parties seeking an exemption should offer guidelines to assist both parties seeking relief and the Commission in its decision making process. We also seek comment on what specific information petitioners should provide in order to demonstrate the factors needed to prove an undue burden.

Criteria to consider are the following:

- 1) Captioning charges exceed 10% of the production budget
- 2) Provide copy of budget sheet that is notarized
- 3) Provide along with budget sheet copies of vendor invoices

If these items are not provided, then petitioner needs to provide evidence of financial instability (i.e. non-profit status, bankruptcy status, annual revenue statement, IRS filing, etc.). The documents would need to be notarized to prevent falsified records from being used. Factor #2 (impact on the operation) and Factor #4 (type of operations) could consider those entities who "inherited" or "acquired" amounts of programming for distribution purposes without substantial cash outlay. For instance, programming that is part of an estate would be granted to family members. Family members, who may have no money up front, may in turn release the programming for distribution in order to generate revenue. They may not be able to have the financial resources to caption the programs. This is also true for distributors of public domain programming who usually acquire this product with little cash outlay.

NOTE: "Production Budget" definition also includes categories of acquired programming/licensed programming. The 10% standard would be applicable to the license fee(s) paid.

96. As noted, NAD urges that we adopt rules patterned after the ADA's undue burden standard. However, we do not believe that the ADA process is directly transferable. In this regard, we note that there are significant differences between the ADA undue burden standard and the four factors adopted by Congress in Section 713. However, we seek comment on what, if any, portion of the ADA process may provide useful insight in the context of the captioning exemption. {FOOTNOTES: In contrast with the ADA undue burden standard, the legislative history here explicitly states that, when considering exemptions, "the Commission should focus on the individual outlet and not the financial conditions of that outlet's corporate parent, nor the resources of other business units within the parent's corporate structure." House Report at 114-115. This is in contrast to the Department of Justice's regulations implementing the ADA which state that among the factors to be considered is: "the overall financial resources of any parent corporation or entity." 28 C.F.R. §36.104. The potential economic effect on the availability of local and niche programming also adds weight to the argument against direct application of the ADA interpretation of undue burden in the context of closed captioning. It appears likely that a local television station, for example, might elect to cease providing a locally produced public affairs program, instead electing to provide a nationally distributed program with captioning if the additional cost of captioning made the local program financially unattractive. This might well be true regardless of whether the television station was independently owned or has some connection to other resources. We acknowledge, in this regard, that Section 713's definition of "undue burden" was discussed in the legislative process as being patterned after use of this term in the ADA. "Undue burden" in the ADA, in turn, was patterned after the term "undue hardship," as that term has been used in the implementation of the Rehabilitation Act since 1973. S. Rep. No. 116, 101st Cong, 1st Sess. at 63 & 35-36. See, e.g., 140 Cong. Record H 5216 (letter of June 8, 1994 to Congressman Markey).}

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Under the ADA, "public accommodations" must be accessible and federally-funded PSAs must be captioned. With this in mind, "public and governmental programming" should not qualify as exempt programming and would not be subject to undue burden standards as this generally applies to the private sector. This is basically for the "citizens' right to know" principle.

97. Finally, we seek comment on the possibility of allowing undue burden exemptions subject to conditions in some instances. This would allow us to require an alternative means of serving persons with hearing disabilities while waiving our closed captioning requirements. For instance, a small local station might seek an exemption from closed captioning its local news. In some situations, we might find it appropriate to grant an exemption subject to a condition that the station provide, for example, greater use of textual graphics. Such conditional exemptions would allow us to encourage alternative (though admittedly less desirable) means of providing service to persons with hearing disabilities in situations where no service would otherwise be available.

Alternative means such as sign language interpreters could be used although it serves only the sign language users of the community. "Universal design" techniques could be developed and applied as an alternative to captioning. For instance, a DVE-squeezed box with the video signal of the teleprompter copy could be inserted on the screen with the news anchor. CG crawls, typically used for emergency weather warnings, could also be used for condensations of the program's script. These methods are not entirely effective and not attractive to the viewers, though.

When alternative means are being used in lieu of captioning, a sample demonstrative tape would be submitted to the FCC when requesting the exemption. The FCC would then determine whether or not the alternative method is adequate to meet the minimal accessibility needs of the viewers when granting or rejecting an exemption.

101. We also solicit comment on which parties should be permitted to seek an exemption from our closed captioning requirements. Specifically, should we limit the process to video service providers or owners or should we also permit program producers and syndicators to seek an exemption? Allowing producers or syndicators to petition for an exemption could be more efficient since the resulting exemption could allow the programming in question to be more widely distributed. Accordingly, commenters should address the advantages and disadvantages of allowing different parties access to the exemption process.

Primarily, the program producers and syndicators are responsible for captioning their own product before submitting them to programmers for airing. The programmers (video service providers) will be instrumental in accepting captioned programming and rejecting uncaptioned programming in order to be in compliance. Therefore, the program producers are ultimately responsible initially and have control of their own production budgets. The 10% standard would be applicable to their budget and therefore these entities would seek exemptions if qualified. If only the programmer (video service provider) were to seek exemptions, they may not have any control over the respective

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producer's production budget and would be harder to justify as they are just the "facilitator". The producer could have a production budget of \$100,000, did not caption it, and was acquired by a programmer (video service provider) that has an annual revenue base of less than \$11 million, the programmer (video service provider) may qualify for the exemption whereas the producers themselves would not qualify for the exemption as they could have afforded the captioning in the first place. This would become a legal loophole if the exemptions were limited to just the programmers (video service providers).

Video signal facilitators (i.e. cable operators) would not be part of the compliance/exemption process as responsibility is held by the program producers and the programmers that carry their programs. Programmers would ensure their signal is captioned prior to retransmission by a video signal facilitator.

102. **Finally we seek comment on whether exemptions granted under Section 713(d)(3) should be for a limited period of time only. This would allow the Commission to periodically reevaluate a particular waiver to determine if it is still warranted.**

Exemptions should be up to a period of one year only. The party being exempted may change their financial status as they grow or decline dependent upon their market conditions. These entities would have to re-file if the conditions of the initial exemption have changed or remained the same. The disadvantage to this concept is the amount of administrative paperwork and the need for recordkeeping/follow-up.

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G. Standards for Accuracy and Quality

111. With respect to the non-technical aspects of quality and accuracy, however, it is our tentative view that we should not attempt to impose standards at the start of our phase-in of closed captioning regulation. The non-technical aspects of the quality of captioning include such matters as accuracy of transcription, punctuation, placement, identification of nonverbal sounds, pop-on or roll-up style, verbatim or edited for reading speed, and type font. We seek comment as to whether accuracy of spelling in captions should be considered a non-technical issue, or whether our captioning rules should include requirements for spelling accuracy. In this context, we note that spelling accuracy is included in the minimum standards for TRS. We know that the quality of captioning is a matter of considerable importance to those viewing captions. We recognize that captions must provide information substantially equivalent to that of the audio portion of a video program in order to be useful and ensure accessibility to individuals with hearing disabilities. Captions also should not interfere with the viewability of the video portion of the program. However, we believe that there are good reasons to defer action on this issue in order to provide time for the captioning community to adjust and adapt to the new environment created by our rules. If, after a period of experience, it becomes apparent that quality levels are unsatisfactory, we can revisit this issue.

For captioning, spelling is a non-technical issue as it is dependent upon the caption writer's educational background and experience and is subject to human discretion and/or error. For comparison, newspapers are not regulated by an authoritative organization for spelling. As far as the TRS regulation is concerned, that is strictly an interpreting issue as it is important that the message is conveyed accurately between two private parties while captioning is a passive television presentation issue where interaction between two private parties is not needed.

A spelling regulation would be hard on live real-time captioning as it is more of an equipment limitation (phonetic transcription) than it is for the operator.

The FCC should consider "adequate" spelling in its regulations.

The FCC could encourage the private sector to publish captioning style manuals in the same fashion as the Chicago Manual of Style for print writers to achieve higher captioning quality in the industry.

Quality of captioning can be equated to the quality of a program's production/content values, which is not regulated. The only regulations in this respect for television programming are those of the EIA and SMPTE in technical standards. Therefore, only technical captioning quality should be regulated in this sense. Non-technical captioning quality can be maintained through competition amongst captioners and perhaps through the establishment of a non-profit captioning quality watchdog organization which would foster the goal of high non-technical captioning quality standards.

119. We seek comment on these tentative conclusions not to adopt specific standards at this time. We ask that parties who disagree with this approach provide specific standards or guidelines that could be implemented, monitored, and enforced as we phase in our closed captioning requirements. Commenters are asked to consider the costs of implementation of any standards they proposed, the effect on the quantity of captioning that can be produced

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under the proposed standards, and the availability of captioners with the required skill levels to fulfill such requirements.

See Item 111 comments

120. We also do not propose to establish minimum credentials for those employed to provide closed captioning for video programming. We believe imposition of such a standard would unnecessarily delay implementation of any closed captioning requirements, without any evidence that only those passing a specific test are the best qualified to provide this service. Moreover, we expect that the quality of closed captioning will improve as the amount of captioning increases and that the marketplace will establish standards for those employed to prepare captions. We seek comment on this tentative conclusion. Commenters who disagree with this assessment are asked to provide specific evidence for the need for such standards and to provide precise standards for caption providers that the Commission could implement and enforce.

FCC should not regulate the captionwriters themselves through certifications. This can be done by the private sector such as the watchdog organization possibility mentioned in the Item 111 comments. A certification regulation would only reduce the number of available captioners, which is already small to begin with... especially the realtime captioners.

121. We further conclude that it is not appropriate or necessary to restrict the captioning methodology used to achieve the goal of maximizing available captioning as long as the criteria for captioning proposed above are met. We seek comment on this conclusion. We are concerned that any restrictions on the method of captioning would prevent certain types of programming from being captioned. For example, we note the drawbacks of the ENR method, especially when not all aural portions of a program are scripted. While we would prefer that program providers use other methods that permit more complete captioning, we are aware that this method has an advantage over other methods in that once an initial investment is made in equipment and software, it is relatively cost free. Using this method of captioning, material that might otherwise not be captioned could be captioned. In the alternative, every broadcast station with local programming and cable system with local origination programming would need to employ staff captioners, which could be prohibitively expensive and result in the loss of programming. Thus, we believe that, at least for the short term, we should not prevent program providers from using this or any other method. We seek comment as to whether we should revisit this issue during the implementation period established by our rules. Commenters supporting regulation of the methods used for closed captioning should provide information regarding the rationale for limiting the permissible captioning methodology. In addition, comments should set forth specific proposals for such requirements.

It's very important to leave all clauses in the broad sense of "captioning" so methodology is not limited to only closed captioning to allow other forms of captioning to be used (e.g. open captioning, subtitling, etc.)

IV. ENFORCEMENT AND COMPLIANCE REVIEW MECHANISMS

122. We tentatively conclude that any closed captioning requirements we ultimately adopt will best be enforced through the existing types of complaint processes. We propose to permit private parties and government agencies to file complaints with the Commission regarding the implementation of our transition requirements for closed captioning. We also propose to require the complaining party to notify the video programming provider of the

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complaint. We propose to require that all complaints be accompanied by the best available documentation, such as viewing logs or video tapes. If we determine that the complaint appears valid, we would notify the video programming provider of this determination. The video programming provider would then be permitted to respond to the complaint. We seek comment on this proposal. Commenters should address the potential effectiveness of the proposed process. We also encourage commenters to suggest modifications to this process which may improve its effectiveness and efficiency. Finally, commenters should address what elements we should require for a valid complaint. For instance, in the case of subscriber complaints, should we require more than one complaint. We note that the legislative history provides that the remedies under Sections 207 and 208 of the Communications Act are available to enforce compliance with Section 713. We seek comment on the applicability of these provisions.

Clarification on penalty is needed for program producers and programmers/video service providers:

Which entity would be subject to a steeper penalty if both were in non-compliance? Any fines resulting from an FCC ruling on complaints would initially be issued to the programmer/video service provider.

The programmer, in turn, would pass along the fines to the program producer. Alternatively, the FCC would fine both entities simultaneously with a heavier penalty on the program producer rather than the programmer/video service provider.

Valid subscriber complaints should involve more than one complainer as it could be simply a bad TV connection or a faulty caption decoder that caused the loss of captions for one person. If there is more than one complaint, then the problem would be obviously the transmission source.

123. We are also concerned with maximizing administrative efficiency and minimizing complaints that are better resolved by the video program provider or through informal processes. Accordingly, we seek comment on a proposal to require complainants to first notify the video programming provider before filing with the Commission and allowing the video programming provider a period of time to resolve the complaint at the local level. Under this proposal, a party would be permitted to file with the Commission only after the video provider fails to respond to the complaint or does not satisfactorily resolve the problem. We believe that this proposal may serve to minimize the administrative burden on all parties involved in the process, including the Commission. We seek comment on this alternative as well as any others that might minimize the administrative burden and potential delays in resolution of valid complaints.

In order for one to be able to complain, one would need to know the following factors:

- Which programs fall under the required minimum percentage of compliance (requires research on part of complainer).**
- Of the programs identified under the minimum percentage, which ones are "supposed" to be captioned but was not transmitted properly during airing. (Videotaped air check tapes would be needed to identify a transmission error if the program master itself has good captions)**
- Verification of the accuracy of program listings that identify which programs are captioned.**
- Verification that caption decoder/TV connection is operating without fault.**

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Once the above variables have been identified, the programmer/video service provider would be contacted by the video signal facilitator with the specific complaint and 30-60 days would be allowed for a response. If 60 days has passed without response nor resolution, the complaint would be forwarded to the Commission for review.

124. We further seek comment on alternative methods or information needed to verify compliance. We could require that each entity responsible for compliance with our closed captioning rules retain in a public file, or have available on request, records sufficient to verify compliance. For example, we could require video programming providers to demonstrate their compliance by placing information regarding the amount of closed captioned programming they distribute in a public file. Commenters should address the possible effectiveness of this type of procedure. We seek comment on this mechanism and how it might be implemented.

Certification of Compliance would be placed in files in the same fashion as the Children's Programming Compliance certification process. One point to make is verification of the accuracy of program listings if such listings are used as reference in identifying which programs are captioned. Often there are program listings that inaccurately identify uncaptioned programs as being captioned and vice versa.

V. ADMINISTRATIVE MATTERS

151. In addition to seeking comment on a complaint process, the Commission invites comments regarding alternative enforcement procedures including a requirement that video programming providers their compliance with by placing information regarding the amount of closed captioning they distribute in a public file. The Commission invites commenters to address the possible effectiveness of this alternative enforcement mechanisms and how it might be implemented.

Refer to Item 124 comments.

152. Federal Rules Which Overlap, Duplicate or Conflict With the Commission's Proposal: None.

There is a possible overlap in the pending reauthorization of the Individuals With Disabilities Education Act (IDEA) by Congress as it pertains to captioning of educational programming. Foresight by the Commission is needed here.

153. Any Significant Alternatives Minimizing the Impact On Small Entities and Consistent With the Stated Objectives: The statutory language provides for exemptions from any closed captioning requirements the Commission may adopt, when imposing those requirements would create an economic burden. Consistent with this directive, the Notice seeks comment on several mechanisms which would allow small entities to be exempt in whole or in part from the closed captioning requirements. These measures are intended, in part, to minimize the regulatory impact on small entities.

**No small entities may be exempt as a whole.
The 10% standard would be applied for determining exemption.**

154. Section 713(d)(1) provides that the Commission may exempt classes of video

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programming or video providers where closed captioning would be economically burdensome. Pursuant to this provision, the Commission proposes to establish a general classification or a number of classifications of programming for which captioning would be economically burdensome. Thus, the Commission seeks comment on whether a definition of economic burden should be based on relative size, degree of distribution, audience ratings or share, relative programming budgets or revenue base, lack of repeat value, or a combination of factors.

Economic burden should only be for relative programming budgets . The other factors have no bearing on the 10% standard.

155. Section 713(d)(3) permits video programming providers or program owners to petition the Commission for an exemption where our video captioning requirements would constitute an undue burden. Section 713(d)(3) further provides specific factors to be considered when resolving such petitions. Accordingly, the Commission seeks comment on how to apply these factors and whether there are any factors which should be considered when determining if a requirement for closed captioning results in an undue burden for an individual video programming provider or program owner.

The 10% standard is to be the general rule of thumb.

B. Initial Paperwork Reduction Act of 1995 Analysis

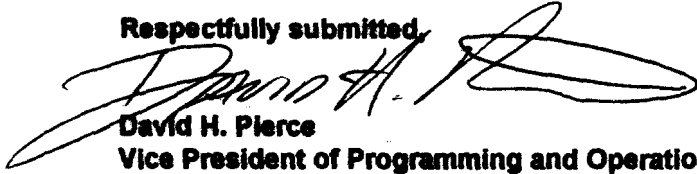
156. This Notice of Proposed Rulemaking (Notice) may contain either proposed or modified information collections. As part of its continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on the Notice. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Use certifications of compliance to be provided by the program producers and/or programmers/video service providers to the video signal facilitators and/or the FCC for their records. If further information is requested by the FCC or the video signal facilitator, the programmer/video service provider or program producer will be contacted for additional back-up data.

This way, the FCC has less paperwork to maintain at the federal level.

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Respectfully submitted,



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